No. 545

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Supreme Court of the United States

OCTOBER TERM—1945

GEORGE McMANUS,

Petitioner,

against

MARINE TRANSPORT LINES, INC.,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT THEREOF

SILAS B. AXTELL,
Attorney for Petitioner.

LUCIEN V. AXTELL,
of Counsel.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

GEORGE McMANUS, your petitioner, respectfully prays for a writ of certiorari to review the decree of the United States Circuit Court of Appeals for the Second Circuit, entered in the above entitled action on the 6th day of June 1945. Your petitioner's time to make this application having been duly extended by order of Mr. Justice Rutledge of this court from September 25th to October 25th, 1945.

The Matter Involved

ONE.—Your petitioner is a citizen of the United States, 50 years of age (R. 30). He is and for many years has been a licensed marine engineer by vocation. For a number of years he has been employed as licensed chief engineer of merchant vessels of the United States. The respondent is a corporation organized and existing under and by virtue of the laws of the State of New York.

Two.—On the 1st of August 1942, the petitioner was employed as a licensed first assistant engineer on the L. T. C. No. 1, a powered canal towboat, owned and operated by the respondent.

Three.—That while the petitioner was so employed and while said towboat, the L. T. C. No. 1, was engaged in the work of towing a barge or vessel within navigable waters of the State of New York, and the United States, and engaged in interstate commerce, he fell from a saw-horse on which he was standing and working, under orders of his immediate superior, the chief engineer of said merchant vessel of the United States.

Four.—That as a result of falling from said saw-horse, which he alleged in his complaint was dangerous and defective, he sustained an injury to his person which caused him to be disabled for a short period of time.

Five.—Petitioner filed a libel in the United States District Court, Southern District of New York, in which he set forth a cause of action under the Jones Act, said libel being filed in November 1942 (R. 2 to 5).

Six.—An answer was duly filed by the respondent in which it denied negligence, but admitted ownership and control of the vessel (R. 6 to 8).

Seven.—The case was duly tried on May 3rd, 1943, before the Honorable Murray Hulbert, District Judge, and the Honorable Court at the end of the trial rendered its decision and made its findings of fact and conclusions of law (R. 83 to 88), and correctly held that the libellant had failed to establish by the required measure of proof, any cause of action for indemnity (R. 254).

Eight.—The District Court proceeded to award the libellant Fifty ($50.00) Dollars maintenance for the pe-

riod of two weeks that he had been definitely disabled at the rate of Twenty-five ($25.00) Dollars per week, and Fifty ($50.00) Dollars to cover payment of a doctor who had treated him and hastened his recovery, and in addition thereto, the court having found that the petitioner who had been unable to go to sea for the voyage which he had contracted for, due to the infection of his leg, awarded the petitioner the additional sum of One hundred fifty ($150.00) Dollars as wages (R. 259-261) and then stated: "my conclusion of law is that the libellant is entitled to recover from the respondent on the second cause of action maintenance and cure the sum of $250.00."

NINE.—From this decision of the District Court, the respondent appealed to the United States Circuit Court of Appeals for the Second Circuit, and on the 6th of June 1945, said court rendered the following opinion *per curiam*:

> "In the course of his employment as an engineer on a vessel of the appellant, the libellant sustained a scratch on his left shin. The injury did not incapacitate him and he continued to perform his duties until the end of the voyage, August 29, 1942. Thereafter, on September 3rd, he entered the employ of another shipowner for whom he worked until September 17th, when the ship's doctor discovered an ulcerous condition of the left shin requiring medical attention. The libellant obtained treatment at a United States Marine Hospital from September 18th, 1942, to September 30th, 1942, when he was pronounced cured. During this same period he was also treated by a private physican at a cost of $50. By the present suit the libellant sought first, indemnity under the Jones Act in the sum of $3000, and second, recovery for maintenance and cure in the sum of $1,500.
>
> The count for indemnity was dismissed for failure of proof.

On the second cause of action, the court awarded $250, of which $50 was for the doctor's bill, $50 for maintenance for the two weeks' period commencing September 18, 1942 and $150 loss of wages during the same two weeks. The appellant challenges the propriety of the allowance for loss of wages and for doctor's bill.

Under the authorities, the award of wages after the end of the voyage and in addition to maintenance cannot be supported. Great Lakes S. S. Co. v. Geiger, 261 Fed. 275 (6 C. C. A.); see also Reed v. Canfield, Fed. Cas. No. 11,641, 20 Fed. Cas. 426 at 429; Chelentis v. Luckenbach S. S. Co., 243 Fed. 536, 538 (2 C. C. A.), aff'd 247 U. S. 372.

There was no error in the allowance of $50 for private medical attention. If the private treatment gave the seaman benefits he could not obtain by recourse to the free Marine Hospital service, the expense would be recoverable. See Calmar S. S. Corp. v. Taylor, 303 U. S. 525, 531, 1938 A. M. C. 341. Under the testimony we cannot say that it did not.

The decree is modified by reducing the award to the libellant for $100. No Appellate costs are allowed to the appellant."

Reasons for Allowance of This Writ

It cannot be urged here that the decision of the United States Circuit Court of Appeals in the Second Circuit is in discord with decisions of other U. S. Circuit Courts, for indeed, the only case similar to it—*Great Lakes* v. *Geiger,* 261 Fed. 275 (6th Circuit), the Circuit Court likewise reverses a district judge for awarding in its discretion to a seaman, in a maintenance and cure case, a small sum in the form of wages, which amounted to slightly more than the cost of board and lodging and doctor's bills.

This petition is based upon the fact that two district judges have in different and separate cases, one decision

in 1918 and the other in 1944, in the exercise of what they believed to be their power as admiralty judges, awarded libellants, who in their judgment deserved it, small sums in addition to maintenance as a matter of equity and justice, and in each instance, the Circuit Court of Appeals has overruled said decisions.

Furthermore, petitioner urges the granting of this writ because he believes that the decisions of the District Courts respectively, were well within the power, limitations and discretion vested in the District Courts by Congress of the United States and the Constitution, and that the decisions of the United States Circuit Court of Appeals, without adequate reason or justice, have in each instance upset and overruled and vacated these judgments.

(a) Your petitioner further urges that the United States Circuit Court of Appeals in this case, has not given due and careful consideration to the reasons urged by your petitioner in its brief before the said court, *i. e.*, that the judicial power in a court of admiralty was created by Article 3, Section 2 of the Constitution of the United States.

(b) That the doctrine of Maintenance and Cure originated in the mind of the District Court and was taken from the ancient maritime codes without regard to any act of Congress or any established rule of the English Admiralty.

(c) That the doctrine of Maintenance and Cure has gradually been enlarged, liberalized and extended by the Admiralty Courts of the United States, and that the decision of the District Court in your petitioner's case was well within the vested power of a court of admiralty of the United States, to do justice to a seaman, ward of the court, as stated at folio 260 of the record:

> "Now, I am sympathetic with the principle that in these cases seamen are wards of the court, but I am

> not disposed to give a man anything that I do not think he is entitled to. I do think he is entitled to something in this case, and I think that the most I could conscientiously allow him is $250, and I therefore make the following findings as to the second cause of action * * *."

That the decision of the Circuit Court of Appeals in the Second Circuit, while in accord with the decision of the Circuit Court of Appeals in the Sixth Circuit, rendered in 1918, it is not in accord with the decision of two District Courts, and with recent decisions of the Supreme Court of the United States.

GEORGE MCMANUS,
Petitioner.

SILAS B. AXTELL,
Counsel.

United States Circuit Court of Appeals

GEORGE MCMANUS,

Libellant-Appellee,

against

MARINE TRANSPORT LINES, INC.,

Respondent-Appellant.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

POINT I

The award of wages in addition to medical expenses and maintenance was a proper exercise of the judicial power of a Court of Admiralty.

The libellant, a licensed chief engineer, employed as assisting engineer on a tug engaged in navigation on the waters of the United States, sustained in the course of his work for the respondent a laceration of his shin which became infected. He continued to work until his period of service by the month had expired and he had been paid and had become engaged as engineer on a vessel that was to make a trip to the war zones. However, when he was examined by a doctor for his new employer, he was rejected, and began supplementing the treatment of a private physician by attending a U. S. Public Health station. His cure was not accomplished in time for him to make the intended voyage at wages of about $800.00 a month including war bonuses for which he had been

orally hired at wages fully as large again as his wages on the canal tow-boat "L. T. C. I." where he sustained the laceration which became ulcerated.

The trial judge Murray Hulbert, worthy successor to Betts J. Brown, J. and Hough, J. seeped with knowledge of the principles and spirit of Admiralty Law announced his decision after an accurate review of the facts at folio 260:

> "Now I am sympathetic with the principle that in these cases, seamen are wards of the court, but I am not disposed to give a man anything that I do not think he is entitled to. I do think he is entitled to something in this case, and I think that the most I could conscientiously allow him is $250.00, and I therefore make the following findings of fact as to the second cause of action" (fol. 260 of the record).

To Action: The dates, times and places of libellant's injury and treatment are stated in the next paragraph of the court's opinion.

Before the learned U. S. Circuit Court of Appeals we endeavored to show that the Court of Admiralty of the United States has inherent equity power in adjudicating the rights of mariners in cases of maintenance and cure, to do just what this Admiralty Judge naturally did—but not a word of discussion of this principle has resulted—we have only the conventional opinion, (*pro curiam*) and impersonal, that it approves of the rule in the *Geiger* Case (261 Fed. 275), Sixth Circuit (1918). In that case in which we think the Circuit Court was heartless and wrong. A trial judge has awarded a seaman $377.14 as wages in addition to $130.00 for maintenance (13 weeks at $10.00 a week) for the loss of a finger which the court found was not due to his fault, but was caused by the negligence of a fellow servant. The decision of this Court in *Chelentis* (247 U. S. 372) had just come down. It does not appear that the learned District Judge had

also read *Quebec* v. *Merchant,* 133 U. S. 375, but we think that Judge Westerhaver read what was said by the very great lawyer Joseph Story in *Harden* v. *Gordon*:

> "It need hardly be said, that courts of admiralty in the administration of their duties, seek to follow the general principles of justice, rather than technical rules, and consequently avail themselves more of doctrines founded in general equity, than in the inflexible strictness of the common law. They have not the rashness to impute blame to the latter, for they are not insensible to its excellence. But they understand, that the common law does not affect to apply remedies to all cases of injustice, and leave to other courts the full right to pursue a more enlarged equity, whenever their constitution enables them to favour and support it."

We argued this before the Circuit Court of Appeals to no avail, and we now urge upon this Court, because we think that the decision of the U. S. Circuit Court leaves the Admiralty Law in a static condition, which can be remedied only by the Court that gave us the *Aguilar* decision 1943, A. M. C. 451.

We put before the Circuit Court the language of Justice Story at page 481 of *Harden* v. *Gordon* (Fed. C. 6047):

> "Supposing that by the principles of law, the seamen are entitled in case of sickness to be healed at the expense of the ship, I am of the opinion, that the claim for such expenses, may be enforced in the Court of Admiralty. It constitutes in contemplation of law, a part of the contract for wages, and it is a material ingredient in the compensation for labor and services of the seamen."

and at page 482 the following for the same case:

> "In the Maddonna D'Idra, 1 Dods. 37, where a claim was made on behalf of Greek sailors for subsistence

> after their discharge from the ship, as well as for antecedent wages, the court did not hesitate to decree it. 'It is', said the learned judge on that occasion, 'wages paid in another form, it is part of the compensation for their labour; and according to the law of the country, to which these men belong, subsistence in the intermediate time must be presumed to form part of the contract for the payment of wages'. In what respect does subsistence in case of a discharge differ from additional subsistence in case of sickness? To use the language of the court it is but 'wages in another form', additional wages to meet additional expenses, and constituting if the maritime law and usage uphold the claim, a part of the contract."

Justice Story as Circuit Judge in the exercise of admiralty power in 1823 created for us the doctrine of maintenance and cure. Had he seen fit in 1823 to have awarded wages as well as maintenance and cure expenses, we would not, of course, have to bring this case to this court in 1945. The learned Circuit Court has in its opinion made not the slightest reference to our suggestion that the Admiralty Law as the Common Law was susceptible but accustomed to expansion and growth to the needs of a changing democratic world. We pointed out and reiterate that seamen did not receive wages to the end of the voyage in addition to maintenance until this court so decided in the *Osceola* case, 189 U. S. 158: that the doctrine of maintenance and cure was not applicable to seamen on harbor craft until Judge Hough harmonized the cases and established the rule in the Bouker No. 2, 241 F. 275, in 1916.

That the same Judge had literally ruled that a wireless operator on a merchant vessel was entitled to maintenance and cure from the vessel owner, although his wages were paid by a third party (The Marconi Company) *Buena Ventura,* 243 Fed. 797.

We urge this Court to grant this petition for a writ of certiorari because we think that a decision of the principles involved will result in improved administration of the admiralty law. Not all U. S. Circuit Judges have had experience in admiralty; in the Geiger's case and in the case at bar, there was no extravagant taking of the employer's funds. There is no reason to suppose that other judges will act improvidently. The allowance made by the District Judge in each instance, $377.14 in Geiger's case and $150.00 in McManus', while small sums to add to the owners deductables for income tax statements, would go a long way towards paying expenses of the families of seamen Geiger and McManus.

The District Court in each instance more familiar with the letter and spirit of the maritime law, has made decisions that were fatherly and kindly, and in the interest of their wards. The United States Circuit Court has in each instance nipped the budding efforts with frosty breath.

It is because there is a Supreme Court of the United States that has recently said:

> "An obligation which thus originated and was shaped in response to the needs of seamen for protection from hazards and peculiarities of marine employment should not be narrowed to exclude from its scope characteristic and essential elements of that work. And, indeed, no decision has been found which so narrows the shipowner's parallel obligation in the case of sickness or disease. Rather the implications of existing authority point the other way. Cf. The Bouker No. 2, supra. The considerations, including those of public interest adverted to by Mr. Justice Story, which support the liability for illness, or for injuries received aboard ship, likewise sustain it for injuries incurred on shore leave, as were those now in issue. To exclude such injuries from the scope of the liability would ignore its origin and purposes."
>
> *Aguilar* 1943, A. M. C. 451-460.

The Admiralty Court exercises its power in an equitable manner.

Hough, J., speaking of Judge Choate, said:

> "He was particularly qualified by native habit and mind to apply to the admiralty the principles of Equity." Charles Merrill Hough in his posthumously published. United States District Court.

Justice Story in *Harden* v. *Gorden* (Fed. case 6047) at page 487, said:

> "It need hardly be said, that courts of admiralty in the administration of their duties, seek to follow the general principles of justice, rather than technical rules, and consequently avail themselves more of doctrines founded in general equity, than in the inflexible strictness of the common law. They have not the rashness to impute blame to the latter, for they are not insensible of its excellence. But they understand, that the common law does not affect to apply remedies to all cases of injustice, and leave to other courts the full right to pursue a more enlarged equity, whenever their constitution enables them to favour and support it."

POINT II

The judicial determination that a District Judge in Admiralty has the power to award in addition to expenses of maintenance and cure, an additional amount to make up for lost earnings is needed.

There are as every practicing lawyer for seamen knows, cases occasionally arising where seamen have been seriously injured through no fault of themselves or their employer, or co-servants. If an admiralty judge has this power, and the facts, McManus and Geiger cases will illustrate the need. Justice could always be done, or at

least there would be fewer cases like Geiger's, or like the mariner in the *Henry B. Fisk,* 141 F. 188. See page 189—where Judge Dodge on a finding of fact that today would have resulted in an award of $20,000.00,—Kriakyos 1945, A. M. C. 439, felt constrained to give the seaman only $111.81.

The admiralty law is a growing, expanding, equitable and efficient agency of our changing world as this court recently said, in the *Aguilar, supra,* 1943 A. M. C. p. 457:

> "Other recent cases however disclose a tendency to expand these traditional exceptions."

The Courts of Admiralty have exercised equity power to invalidate releases executed by improvident mariners where the releases purported to "release every right he had or expected to have", and the Honorable Circuit Court has sustained the District Judges in so doing, and this court denied a writ, 1939 A. M. C. 1597. A copy of this release appears at 1940 A. M. C. 1292, *i. e.,* 1939 A. M. C. 585-1597; *Stuart* v. *Alcoa,* 1944 A. M. C. 910.

The reinstatement of the decree and award of the U. S. District Court will improve the efficiency of the Admiralty Court in the doing of justice in those cases where a finding of negligence cannot be made on the true facts, and yet, where the damage to the seaman has been so serious that an award for maintenance and cure is not adequate by present day standards.

Respectfully submitted,

Silas B. Axtell,
Attorney for Petitioner.

Lucien V. Axtell,
of Counsel.

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GEORGE McMANUS,

Petitioner,

against

MARINE TRANSPORT LINES, INC.,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

WALTER X. CONNOR and
VERNON S. JONES,
Advocates for Respondent.

Pandick Press, Inc., 22 Thomas St., New York 6, N. Y., U. S. A.

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Supreme Court of the United States

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GEORGE McMANUS,
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against

MARINE TRANSPORT LINES, INC.,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

STATEMENT.

Petitioner, a seaman, was awarded $50.00 for maintenance and $50.00 for cure on account of a disability due to accident lasting two weeks. This disability occurred after the end of the voyage of respondent's vessel, after petitioner had quit respondent's employ and, indeed, after he had found employment elsewhere and had quit that.

The district court found that the negligence count in the libel was without merit and dismissed it. However, it allowed $150.00 for the foregoing period of disability which the Circuit Court of Appeals, for the Second Circuit, reversed (149 F. 2d 969). With regard to this award, the Circuit Court said:

> "Under the authorities, the award of wages after the end of the voyage and in addition to maintenance cannot be supported. *Great Lakes S. S. Co.* v. *Geiger,* 261 Fed. 275 (6 C. C. A.); see also *Reed* v.

Canfield, Fed. Cas. No. 11,641, 20 Fed. Cas. 426 at 429; *Chelentis* v. *Luckenback S. S. Co.,* 243 Fed. 536, 538 (2 C. C. A.), aff'd 247 U. S. 372."

Relief Sought by Petitioner.

Petitioner concedes that the decision of the Circuit Court of Appeals, below, is in accord with decisions of other United States Circuit Courts of Appeals (Petition, Page 4). Nonetheless, he asks this court to grant a writ of certiorari so that it can later, by judicial decision, legislate a change in the law and require this respondent and other shipowners to pay seamen wages in addition to maintenance and cure during the period of disability. He does not offer any legal argument for this proposed change. He asks that the change be made for the reason that courts have legislated before and courts should be "fatherly and kindly" and that in any event he is asking for very little, which the employer could deduct from income for tax purposes.

The petitioner says that the district court, in awarding him $150 wages for one month, intended not to limit him to his strict legal rights but to award him something *ex gratia* because of a discretion which petitioner says should be inherent in admiralty courts.

The fact is that the district court did not have any such thought in mind. On the contrary, the district court intended to award petitioner only what he was strictly entitled to. It said (87):* "Now, I am sympathetic with the principle that in these cases seamen are wards of the court, but I am not disposed to give a seaman anything that I think he is not entitled to. I do think that he is entitled to something in this case, and I think that the most I can conscientiously allow him is $250, * * *"

---

* References are to the pages of the record.

The Circuit Court of Appeals correctly decided that the libelant was not entitled to the two weeks' wages. The Circuit Court did not mention or discuss the question of whether a district court could award more to a seaman, because it correctly interpreted the district court's opinion that the district court was not attempting any such thing.

In any event, the petitioner's argument that he "deserves" some extra money as wages is without merit. The record will show that petitioner received more than his deserts. The district court did not believe his claim of negligence and dismissed it. He concedes now (Petition, Page 2) as he did in the circuit court that the dismissal was correct. He did not seek to review the dismissal in the Circuit Court of Appeals upon the respondent's appeal.

The Facts.

Petitioner was one of two engineers on a small tank vessel. He asserts that on a date which he fixed in his pleadings as August 1, 1942 (3), but which he changed on the trial to some later but unspecified day in August, 1942 (11, 12), a wooden bench, upon which he was standing, collapsed causing him to scratch his shin when he fell (12). Respondent's evidence showed that the bench did not collapse and that petitioner scratched his shin as he was stepping down from the bench (66-68). Petitioner received some treatment (15), but continued to stand his regular watches until August 29, 1942, the end of the trip, when he left the vessel (16), to enter the employment of another shipowner on the steamship *Cape Romano,* an ocean-going vessel (25, 86). He performed his duties on this vessel until September 17, 1942 (27), when he was denied further employment because it was found that he had a condition of the left shin which needed medical attention (18, 86). He obtained treatment

at a United States Marine Hospital from September 18, 1942 to September 30, 1942, when he was pronounced cured (86).

With regard to the negligence count, the court found as a fact that petitioner's injuries * * * "were not due or caused by the fault or want of care on the part of the respondent or to the unseaworthiness of the vessel with respect to the appliances which were furnished for use and accommodation of the libelant, nor by reason of the negligence of the respondent, its agents, officers and employees" (85).

The district court allowed petitioner $150 for his loss of wages during the period for which he was also allowed $50 maintenance (81). The court allowed these wages not on the theory that they were due as wages to the end of the voyage nor that they were due as compensatory damage because of negligence. The petitioner had already received his full wages to the end of the voyage. The district court specifically found that there was no right to indemnity and thus the wages were not allowed on this basis (85). The Circuit Court reversed this award (97, 98).

POINT I.

THE DENIAL OF WAGES BEYOND THE VOYAGE WAS CORRECT.

Apparently this is the second case in which a seaman has attempted to obtain wages in addition to his maintenance. In the first case this attempt was rejected. *Great Lakes Steamship Co.* v. *Geiger,* 261 Fed. 275.

In that case the Circuit Court of Appeals for the Sixth Circuit had presented to it the precise question now before this court. The district court had allowed wages beyond

the end of the voyage and the shipowner appealed. In dealing with the question, the circuit court said at page 277:

> "In the *Osceola* (1902) 189 U. S. 158, 175 23 Sup. Ct. 483, 487 (47 L. Ed. 760), Mr. Justice Brown, upon an elaborate review of the English and American authorities, announced the proposition, among others, that——
>
> > 'The vessel and her owners are liable, in case a seaman falls sick, or is wounded, in the service of the ship, to the extent of his maintenance and cure, and to his wages, at least so long as the voyage is continued.'
>
> "In view of the words 'at least', and considering other decisions, libelant contends that there is no settled rule as to the period of wage recovery and thus that courts of admiralty should, 'in the exercise of a sound discretion, give or withhold damages according to principles of equity and justice, considering all the circumstances of the case.' Respondent insists that under well-settled rules recovery after the termination of the voyage is absolutely forbidden. The District Court, without expressing 'final or definite opinion * * * as to the period during which a lake seaman is entitled to wages after an injury, concluded that an award of three months' wages was reasonable in view of all the circumstances.' We are accordingly urged to declare the applicable rule.
>
> "The phrase 'at least', in the extract quoted from the opinion in the *Osceola* case, was doubtless meant to apply both to liability for maintenance and cure (see *The Bouker No. 2* [C. C. A.] 241 Fed. at page 833, 154 C. C. A. 533) and to wages; but it was not, in our opinion, intended to suggest that wages beyond the termination of the voyage are recoverable in a case where the ship was not at fault in respect to the accident, nor remiss in its duty to furnish cure and

maintenance thereafter, unless possibly where the term of shipment extends beyond the termination of the voyage. The proposition quoted states a minimum, not a maximum, of liability. It is not without significance, as bearing upon the use of the phrase 'at least', that in *The Iroquois,* 194 U. S. 240, 24 Sup. Ct. 640, 48 L. Ed. 955 (about a year after the decision in *The Osceola*), in an opinion also by Mr. Joseph Brown, a substantial recovery of damages for failure to perform the ship's full duty with respect to surgical treatment was affirmed, although the ship was not responsible for the accident itself. In such recovery wages lost would naturally be a proper element of damages.

* * * * * *

"But, so far as we have seen, the decision in *The Osceola* has not been distinctly construed as extending to liability for wages beyond the termination of the voyage, except in case of the fault of the ship in the performance of some duty, or unless the seaman's contract extended beyond the end of the voyage. On the contrary, the Circuit Court of Appeals of the Seventh Circuit, apparently construes the *Osceola* Case as allowing wages only to the end of the voyage (*The Nyack,* 199 Fed. 383, 389, 118 C. C. A. 67), and the Circuit Court of Appeals of the Second Circuit, in *Chelentis* v. *Luckenbach S.S. Co.,* 243 Fed. 536, 538, 156 C. C. A. 234, L. R. A. 1913F, 991, states the rule that the recovery by a seaman injured in the service of the ship is limited to his wages to the end of the voyage and the expense of his maintenance and cure.

* * * * * *

"Our conclusion is that upon the record presented, libelant's right to wages is, as matter of law, confined to the end of the voyage, and that the award below was in this respect unwarranted." * * *

In *The Bouker No. 2,* 241 F. 831 (C. C. A. 2nd Circuit) the court reviewed the elements of maintenance and cure

and concluded that the right to maintenance and cure extended beyond the end of the voyage. However, the court did not allow any wages in addition to maintenance. The implications in the decision are that no such allowance is warranted.

In this connection, it should be noted that in *The Harvey B. Fiske,* 141 F. 188, cited by petitioner, the court said at page 191: * * * "No question arises as to his wages; they have been paid to the end of the voyage."

It should be observed that, in *Great Lakes Steamship Co.* v. *Geiger, supra,* the court construed the language of the Supreme Court in *The Osceola, supra,* and concluded that, when the court used the expression "at least", it was not implying that there was any liability for wages beyond the end of the voyage. By its decision in the *Calmar Steamship Corp.* v. *Taylor,* 303 U. S. 525, the Supreme Court confirmed that construction. The court observed at Page 528:

> "In *The Osceola supra,* this court reserved the point whether the duty of maintenance and cure extends beyond the duration of the voyage, and that question, so far as this Court is concerned, remains an open one."

The Court concluded at page 530:

> "* * * We can find no basis for saying that, if the disease proves to be incurable, the duty extends beyond a fair time after the voyage in which to effect such improvement in the seaman's condition as reasonably may be expected to result from nursing, care, and medical treatment. This would satisfy such demands of policy as underlie the imposition of the obligation. Beyond this we think there is no duty, at least where the illness is not caused by the seaman's service."

No wages were allowed to Taylor although, if they were part of the shipowner's obligation to him, the Supreme Court should have said so and awarded them. It must be concluded therefore, that the shipowner's duties as found by the Supreme Court did not include the payment of wages in addition to maintenance.

These conclusions stem from the early and classic decisions of *Harden* v. *Gordon*, Fed. Cas. No. 6047, and *Reed* v. *Canfield*, 20 Fed. Cas. page 426 Case No. 11641.

Judge Storey in the latter case described the limits of the shipowner's obligation of maintenance and said at page 529:

> "* * * The seaman is to be cured at the expense of the ship, of the sickness or injury sustained in the ship's service. It must be sustained by the party, while in the ship's service; and he is not to receive any compensation, or allowance for the effects of the injury. But so far, and so far only, as expenses are incurred in the cure, whether they are of a medical or other nature, for diet, lodging, nursing, or other assistance, they are a charge on, and to be borne by, the ship. The sickness or other injury may occasion a temporary or permanent disability; but that is not a ground for indemnity from the owners. They are liable only for expenses necessarily incurred for the cure; and when the cure is completed, at least so far as the ordinary medical means extend, the owners are freed from all further liability. They are not in any just sense liable for consequential damages. The question, then, in all such cases is, what expenses have been virtually incurred for the cure; not what might, under other circumstances, be incurred. The owner is not to respond for charity actually administered by others, but for expenses. He is not to pay what may remunerate the sufferer for his losses, or what in com-

> passion or humanity he might demand; but what the law has measured out as the limit of justice."
> * * *

These decisions are amply sufficient to require the denial of the petition.

CONCLUSION.

THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE DENIED.

Respectfully submitted,

Advocates for Respondent.

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Respectfully submitted,

WALTER X. CONNOR and
VERNON S. JONES,
Advocates for Respondent.